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MD

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/311,956 05/14/99 KEITHLY

J 876P020

EXAMINER

IM62/0131

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THREE FIRST NATIONAL PLAZA
SUITE 1700
CHICAGO IL 60602

PRATT, H

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

01/31/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/311956

Applicant(s)

Kerthly et al

Examiner

Pratt, H.

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-56 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-56 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of References Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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DETAILED ACTION

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chenchin et al., Wu et al. or Houghtaling in view of Nelson et al and Moore (abstract only) .

Chenchin et al. disclose a process of treating pineapple with a pineapple juice made from different seasons and which has a particular Brix/acid ratio (abstract and col. 2, lines 6-17). Wu et al. disclose that it is known to blend various fruit juices together to achieve a particular color and flavor (col. 35-45) Houghtaling discloses that it is known that citrus fruit concentrate is made up of several species of citrus fruit to achieve a Brix acid ratio of 11:1 (col. 2, lines 45-57, and lines 63-73). Claim 1 differs from the reference in choosing a cultivar from an early season with a particular color intensity and sensory quality. Nelson et al. disclose that it is known that oranges mature at particular times and that it is known to add to a concentrate of high color and low acidity might be stored for blending with an early season juice of low color and high acidity. (page 40, last para. and page 42, lines 1-50, and page 64, 1st complete paragraph). Moore discloses that it is known to mix different naturally occurring oranges from an early season and late-season. The steps of extracting, collecting and blending are well known in the art, especially

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in view of the above references. The limitations of choosing particular cultivars of oranges is seen as within the skill of the ordinary worker, as the references show that it is known that they have different characteristics and it would have been obvious to blend the various juices to make a particular product and to choose a particular cultivar as a standard (I. e. the Hamlin orange.) Therefore, it would have been obvious to choose cultivars from various seasons and to blend them for particular color intensities and flavors.

The further limitations as in claims 2 of harvesting in October or November, claim 3 of blending, and claim 4 of blending a particular amount and claim 5, of collecting early season orange juice, claim 6 of choosing a particular color are seen as obvious refinements of a known process. Applicants disclose in their specification, on page 2, that Color Numbers are well known, and reference is given as to color determination found in the cited handbooks. Therefore, it would have been obvious to blend various juices from oranges having particular colors and flavor.

In considering the patentability of the claim 7 and others as to particular cultivars with particular colors and taste under 35 U.S.C. Section 103, the discovery of an optimum value of a result effective variable is ordinary within the skill of the art. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215,219 (CCPA 1980). In developing a juice product, properties such as taste and color are important. It appears that the precise cultivars as well as their proportions affect taste and color and, thus, are result effective variables which one of ordinary skill in the art would

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routinely optimize. Therefore, it would have been obvious to choose known oranges with a particular color and flavor and to blend them to make a particular product.

The limitations of claims 9-48 have been discussed above and are obvious for those reasons.

Claims 49- 56 require the use of particular amounts of stored juice and early season juice and particular cultivars. As juice from various seasons is known, some of it would have had to have been stored. As it is known to blend fruit juices and the use of juice from various seasons is known, then it would have been obvious to use various amounts of each juice to produce the claimed product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Pratt whose telephone number is (703) 308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. David Lacey, can be reached on (703) 308-3535. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602 (unofficial faxes), **after final faxes 703 305 3599, and other official faxes 703 305 7718**. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HELEN PRATT
H. Pratt
PRIMARY EXAMINER

1-27-00